

**Nova Southeastern University and Nova Southeastern University United Faculty of Florida, affiliated with Florida Teaching Profession, National Teaching Association, Petitioner.** Case 12-RC-8207

May 12, 1998

**ORDER DENYING REVIEW**

BY CHAIRMAN GOULD AND MEMBERS FOX AND LIEBMAN

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel, which has considered the Employer's request for review of the Regional Director's Decision and Direction of Election (pertinent portions are attached as an appendix).<sup>1</sup> The Employer's request for review is denied as it raises no substantial issues warranting review.

<sup>1</sup> The only issue on which review was requested was the Regional Director's finding that a unit including graduate and undergraduate faculty was appropriate.

**APPENDIX**

**DECISION AND DIRECTION OF ELECTION**

5. The Petitioner seeks an election in a unit of all full-time faculty employed by the Employer in the position of lecturer, instructor, assistant professor, associate professor, and professor in its Farquhar Center for Undergraduate Studies, Center for Psychological Studies, Oceanographic Center, School of Business and Entrepreneurship, School of Computer and Information Sciences, and School of Social and Systemic Studies, excluding all program professors, visiting professors, adjunct professors, program coordinators, associate deans and deans, all employees employed in the Fischler Center for the Advancement of Education, the Family and School Center, the Shepard Broad Law Center, the Health Professions Division, and supervisors as defined in the Act.<sup>3</sup> The Employer contends that the Fischler Center for the Advancement of Education should be included in the unit, and the Farquhar Center for Undergraduate Studies should be excluded from the unit, based on its community-of-interest analysis. There is no other dispute between the parties regarding the scope or composition of the unit, nor any other issue for resolution presented here.<sup>4</sup> There are approximately 140 employees in the petitioned-for unit and approximately 139 employees in the unit proposed by the Employer. There are approximately 194 employees in the unit found appropriate here. There is no history of collective bargaining among the Employer's employees.

The Employer is a nonprofit, fully accredited, coeducational institution founded in 1964. It is governed by a board

of trustees. There are 8 administrative units and 10 academic centers, with associate vice presidents or vice presidents for the administrative units, an executive provost for academic affairs, and a chancellor for the health professions division, reporting to the president. The Employer has an employee handbook applicable to all employees which contains its employment policies and procedures and employee benefits. The Employer also has a faculty policy manual, which is applicable to all faculty.

The Employer is known for innovative and flexible educational programs designed for working adults and professionals, as well as recent high school and college graduates, using traditional and nontraditional formats. It offers courses at its home campuses and at field-based locations. The Employer has rolling admission/registration periods.

As of 1996, two-thirds of the enrolled students attended classes in the three counties surrounding its main campus: Broward, Palm Beach, and Dade. About 82 percent of the student body attended classes in Florida. Unlike a traditional university, graduate students accounted for 74 percent of its enrollees. The majority of undergraduate and graduate students did not enter their programs immediately after graduation from high school or college. The mean age for undergraduate students is 30 years and for graduate students is 38 years. As of 1998, there are 16,500 enrolled students.

As noted, the parties agreed that the following centers should be excluded from the unit: the professional schools known as the Shepard Broad Law Center and the Health Professions Division, and the Family and School Center which provides programs to meet the needs of families and children through specialized and alternative educational environments, parent/child classes, and counseling and testing services.

The Petitioner seeks to represent six of the seven remaining academic centers: Farquhar Center for Undergraduate Studies (FAR); Center for Psychological Studies (CPS); Oceanographic Center (OC); School of Business and Entrepreneurship (SBE); School of Computer and Information Sciences (SCI); and the School of Social and Systemic Studies (SSS). Contrary to the Petitioner, the Employer contends that the Fischler Center for the Advancement of Education (CAE) should be included in the petitioned-for unit, and the FAR should be excluded therefrom.

FAR and CPS are located on the main campus in Davie; OC is in Dania (15 miles from Davie); SBE, SCI, and SSS are in Fort Lauderdale (7 miles from Davie); and CAE is in North Miami Beach (16 miles from Davie). The university library is located on the main campus.

The CPS offers predoctoral internships, master's and doctorate and postdoctorate programs. Its focus is on training, research, and service. It operates the Community Mental Health Center, with three sites, serving western Broward County.

The OC conducts innovative research and provides undergraduate and graduate education in the marine sciences. Its undergraduate programs are offered jointly with FAR.

The SCI offers programs that enable professionals to pursue advanced degrees in computer science and information systems without career interruption. The master's degree programs are offered on campus or "on-line." The doctoral programs are offered through cluster or institute formats: cluster students attend four extended weekend sessions a year, and institute students attend two week long sessions a year, with

<sup>3</sup> The unit appears as stated at the hearing.

<sup>4</sup> In its brief, the Employer appears to have dropped any claim that Philinda Hutchings, an associate professor in the Center for Psychological Studies, is a supervisor. In any event, the record fails to establish that she is a statutory supervisor.

on-line computer activities, projects, and research conducted between sessions.

The SSS has two departments, family therapy and dispute resolution, which offer master's and doctoral degree programs. The SSS also operates the Clinical and Community Outreach Center, Family Therapy Associates, and the Conflict Management Center, which provide various services to the local community.

The SBE's academic mission is field-based or distance learning. A majority of SBE students are working professionals. The master's division offers programs focused on the needs of middle and upper level management personnel for general management skills and technologies. The SBE doctoral division offers programs focused on the needs of high-level corporate and public agency personnel for strategic planning and decisionmaking skills. The Institute for Family Business is a cooperative effort between SBE and SSS which offers programs and services designed to meet the needs of business families.

The SBE offers all its graduate degree programs on the main campus and offers several master's and doctoral degree programs in the cluster format throughout Florida, selected U.S. cities, and abroad. Full-time students attend classes on weekdays and working students attend classes on weekends. Although the SBE employs approximately 140 adjuncts for its offsite clusters, the full-time faculty must be willing to travel in order to conduct offsite teaching on a face-to-face basis. The SBE shares full-time faculty with the FAR for teaching business courses.

The CAE offers field-based degree programs at the master's and doctoral levels designed for working professional educators and administrators. Its programs are offered in 49 cities in the U.S., Canada, and abroad. Of its 8000 students, approximately 3000 attend classes in the three counties surrounding the main campus in Davie. Its six programs focus on instructional technology and distance education, teacher education and school administration, communication sciences and disorders (speech-language pathology and audiology), and life span care and administration.

The CAE operates in cluster or cohort groups of graduate students with classes offered on weekends, at various intervals, during a semester. Although a few CAE faculty members have the primary function of overseeing the adjunct professors who teach at the distance education sites, all other CAE faculty teach through the utilization of distance education technology such as on-line computer, compressed video, and audio bridge.

The CAE's full-time faculty, known as "program professors," are located at the Employer's north Miami beach site. Unlike the other graduate centers and the FAR, the CAE does not apply the traditional academic ranking system to its faculty. However, the faculty policy manual applies to the CAE faculty in all other respects.

At the FAR, the College of Professional and Liberal Studies offers Bachelor's degree programs in the arts and sciences, which are conducted primarily in a small classroom setting with face-to-face contact between students and teachers. The College of Career Development offers Bachelor's degree programs designed for working adults, with classes conducted in the evening and on weekends, on campus and at various off campus sites. The FAR offers dual admission programs with the CPS, OC, SSS, and SBE. In general, the

FAR faculty carry a heavier teaching load than faculty at the graduate centers.

With the exception of SSS, all graduate centers and the FAR offer distance learning through the traditional onsite teaching format or through an on-line computer, compressed video, or audio bridge.

Since asserting jurisdiction over private, nonprofit universities,<sup>5</sup> the Board has continued to apply its traditional community-of-interest analysis to questions posed regarding the composition and scope of petitioned-for units.<sup>6</sup> The Board has not prohibited the inclusion of undergraduate faculty with graduate faculty in a single unit,<sup>7</sup> although it has accorded individual treatment to faculty in a postgraduate professional school.<sup>8</sup> The Board's traditional analysis requires a petitioner to seek an election in an appropriate unit, not the most appropriate unit.<sup>9</sup>

Based on the foregoing and the record evidence as a whole, I find that the CAE and the FAR should be included in the petitioned-for unit. The record evidence establishes that the faculty employed in the CAE and the FAR share a sufficient community of interest with the petitioned-for faculty to warrant their inclusion in the appropriate unit. The CAE and the FAR faculty receive the same benefits and are subject to the same policies and procedures as the petitioned-for faculty. Their primary function is teaching, whether in a traditional setting or in the distance learning format, just like the petitioned-for faculty. The record evidence shows that the Employer's innovative and flexible approach to the evolution of its educational mission has permeated all its programs. In addition, the FAR has several dual admission programs with the graduate centers and shares faculty with the SBE. It should be noted that the OC offers both undergraduate and graduate programs. The CAE faculty's lack of traditional academic ranking fails to outweigh the common benefits, terms and conditions of employment shared with the other faculty.

Accordingly, I find that the following employees constitute an appropriate unit for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time faculty employed by the Employer in the position of lecturer, instructor, assistant professor, associate professor, professor and program professor in its Farquhar Center for Undergraduate Studies, Center for Psychological Studies, Oceanographic Center, School of Business and Entrepreneurship, School of Computer and Information Sciences, School of Social and Systemic Studies, and Fischler Center for the Advancement of Education, excluding all visiting professors, adjunct professors, program coordinators, associate deans and deans, all employees employed in the Family and School Center, the Shepard Broad Law Center, the Health Professions Division, and supervisors as defined in the Act.

<sup>5</sup> *Cornell University*, 183 NLRB 329 (1970).

<sup>6</sup> *Trustees of Boston University*, 228 NLRB 1008 (1977), and 236 NLRB 1535 (1978).

<sup>7</sup> *Trustees of Boston University*, supra at 1010-1011.

<sup>8</sup> See *Syracuse University*, 204 NLRB 641 (1973), regarding its school of law.

<sup>9</sup> *Dezcon, Inc.*, 295 NLRB 109 (1989).